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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,553	09/19/2000	Michel Gillet	BEIERDORF 65	1497
27386	7590	01/24/2005	EXAMINER	
NORRIS, MCLAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/646,553

Applicant(s)

GILLET ET AL.

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6 and 16-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/8/04 has been entered.

### ***Withdrawn Rejections***

2. The 35 U.S.C. 103 rejection of claims 1-3, 6, 15, 16 and 21-23 over Murayama et al. in view of Feret of record in the Office Action mailed 4/26/04, Pages 2-4, Paragraph #3 has been withdrawn due to the Applicants amendment filed 12/8/04.

3. The 35 U.S.C. 103 rejection of claim 4 over Murayama et al. in view of Feret and in view of Haffner et al. of record in the Office Action mailed 4/26/04, Page 4, Paragraph #4 has been withdrawn due to the Applicants amendment filed 12/8/04.

4. The 35 U.S.C. 103 rejection of claims 17-20 over Murayama et al. in view of Feret and in view of Masatoshi of record in the Office Action mailed 4/26/04, Pages 4-5, Paragraph #5 has been withdrawn due to the Applicants amendment filed 12/8/04.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1, 2, 6, 17, 18 and 21-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Van Gompel (4,753,840)

Regarding **claims 1, 17, 18, 23, 25 and 26**, Murayama et al. discloses an elastic laminate backing material consisting essentially of elastic layers, the laminate composed of at least a first layer of an elastic polymer film (see col. 2, lines 18-20 and lines 56-60) and a second layer of an elastic textile sheet (see col. 2, lines 21-22), wherein a self-adhesive coating (see col. 2, lines 8-13 and lines 16-22) has been applied to the textile sheet on the side opposite to that in contact with the polymer film (see col. 5, lines 19-27) and wherein the first layer is composed of two coextruded layers comprising an outer layer and a tie layer (see col. 2, lines 56-60 and lines 64-65). However, Murayama et al. fails to disclose the elastic textile sheet comprising polyethylene and/or polypropylene and having either a microembossed effect or a macroembossed effect. Van Gompel teaches that it is old and well-known in the analogous art to have an elastic textile sheet comprising polyethylene and/or polypropylene (see col. 3, lines 14-16) and having either a microembossed effect or a macroembossed effect (see col. 4, lines 50-59) for the purpose of providing a softer textile feel to the resulting laminate, both on the film side and for the textile side (see col. 7, lines 50-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the elastic textile sheet in Murayama et al. to comprise polyethylene and/or polypropylene and to have a microembossed effect or a macroembossed effect as suggested by Van Gompel in order to provide the elastic laminate with a softer textile feel, both on the film side and for the textile side.

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Regarding **claims 21 and 22**, Murayama et al. fails to disclose the laminate showing no more than 10% permanent deformation in either the transverse or longitudinal direction after elongation of 50% and 100% of its original length. However, Murayama et al. teaches an elongation at break (see col. 5, table 1) and the laminate consisting of all elastic layers (see col. 2, lines 30-33 and lines 56-60). Therefore, the permanent deformation of the laminate would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results. Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the laminate in Murayama et al. showing no more than 10% permanent deformation in either the transverse or longitudinal direction after elongation of 50% and 100% of its original length, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art absence of showing unexpected results. MPEP 2144.05(II).

Regarding **claim 2**, note in Murayama et al. the weight per unit area of the textile sheet is 25 to 200 g/m<sup>2</sup> (see col. 2, lines 37-38). Regarding **claim 6**, note in Murayama et al. the polymer film of the first layer comprises at least 65 wt% of a thermoplastic elastomer (see col. 5, lines 19-21). Regarding **claim 28**, note in Murayama et al. the outer layer and the tie layer, comprise pure thermoplastic polyolefins (see col. 2, lines 55-60). Regarding **claims 24 and 27**, the limitation "prepared by metallocene-catalyzed polymerization" is a method of production and therefore does not determine the patentability of the product itself. Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. MPEP 2113.

7. **Claims 4 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Van Gompel (4,753,840) and in view of Haffner et al. (6,096,014).

Murayama et al. in view of Van Gompel teaches the claimed invention as shown above except for the polymer film of the first layer being a copolymer of ethylene and  $\alpha$ -olefin having a carbon number  $C_4$ - $C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup>. Haffner et al. teaches that it is old and well-known in the art to have a copolymer of ethylene and  $\alpha$ -olefin having a carbon number  $C_4$ - $C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup> (see col. 4, line 43 and Table A) for the purpose of producing a thermoplastic film with effective barrier properties and stability. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the polymer film of the first layer in Murayama et al. with a copolymer of ethylene and  $\alpha$ -olefin having a carbon number  $C_4$ - $C_{12}$ , where the copolymer has a melt index of from 1 to 20 g/(10min) and a density of from 860 to 900 kg/m<sup>3</sup> as suggested by Haffner et al. in order to provide the polymer film with effective barrier properties and stability.

8. **Claims 16, 19 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al. (5,633,070) in view of Van Gompel (4,753,840) and in view of Masatoshi (GB 2 252 528).

Murayama et al. discloses an elastic laminate backing material consisting essentially of elastic layers, the laminate composed of at least a first layer of an elastic polymer film (see col. 2, lines 18-20 and lines 56-60) and a second layer of an elastic textile sheet (see col. 2, lines 21-22), wherein a self-adhesive coating (see col. 2, lines 8-13 and lines 16-22) has been applied to the textile sheet on the side opposite to that in contact with the polymer film (see col. 5, lines 19-27) and wherein the first layer is composed of two coextruded layers comprising an outer layer and a tie layer (see col. 2, lines 56-60 and lines 64-65). However, Murayama et al. fails to disclose the elastic textile sheet having either a microembossed effect or a macroembossed effect. Van Gompel teaches that it is

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old and well-known in the analogous art to have a textile sheet having either a microembossed effect or a macroembossed effect (see col. 4, lines 50-59) for the purpose of providing a softer textile feel to the resulting laminate, both on the film side and for the textile side. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the elastic textile sheet in Murayama et al. to have a microembossed effect or a macroembossed effect as suggested by Van Gompel in order to provide the elastic laminate with a softer textile feel, both on the film side and for the textile side.

Furthermore, both Murayama et al. and Van Gompel fail to disclose the polymer film, and both the polymer film and the textile sheet having a microembossed and macroembossed effect. Masatoshi teaches that it is old and well-known in the analogous art to have both a textile sheet and a polymer film with a microembossed effect and a macroembossed effect (see page 10, line 28 to page 11, line 4) for the purpose of providing an elastic laminate with a softer textile feel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the textile sheet and the polymer film in Murayama et al. to have a microembossed effect and a macroembossed effect as suggested by Masatoshi in order to provide the elastic laminate with a softer textile feel.

#### *Response to Arguments*

9. Applicant's arguments with respect to claims 1, 2, 4, 6 and 16-29 have been considered but are moot in view of the new ground(s) of rejection.

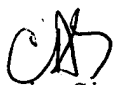
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*Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Catherine Simone  
Examiner  
Art Unit 1772  
January 8, 2005

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
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1/21/05